

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.955 OF 2004

Rajaram Vithoba Yadav ..Petitioner.

Vs.

Vishnu Ganpat Powar ..Respondent.

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Mr.A.A.Kumbhakoni for the Petitioner.

Mr.M.R.Suryawanshi for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

10th June, 2005.

P.C. :

An application for the amendment of a written statement in a suit for eviction under the Rent Act on the ground of non-user of the suit premises has been dismissed. The suit is of the year 1999. The written statement was filed on 17th November, 1999. The Code of Civil Procedure (Amendment) Act of 2002 came into force on 1st July, 2002 and Section 16(2)(b) thereof provides that the amended provisions of Order VI Rule 17

shall not apply in respect of any pleading filed before the commencement of Section 16 of the Amendment Act. In these circumstances, the amended provisions of Order VI Rule 17 did not govern the present case.

I have perused the proposed amendment. By the proposed amendment, the Petitioner seeks to set up a plea that as a result of a construction which has been carried on inter alia by the Plaintiff's son in proximity to the suit premises, the Petitioner has been obstructed from the beneficial use and enjoyment thereof. There is no reason why the amendment to the written statement should not have been allowed. The Learned Trial Judge has observed that the trial of the suit had commenced and that if the construction had been carried out nearly three years prior to the application, there is no reason for not bringing the application for amendment on the record earlier. The Learned Trial Judge is, ex facie, in error in proceeding on the basis that the amended provisions of Order VI Rule 17 would apply. That apart, there is no basis for the Trial Court to conclude that the amendment will be barred on the ground that it was not brought

within a period of three years. The amendment to a written statement, like amendments to pleadings in general, can be allowed at any stage provided the Court is satisfied in the interests of justice what the amendment should be allowed.

In the circumstances, the impugned order dated 28th October, 2003 is quashed and set aside. The application for amendment at Exh.36 in Regular Civil Suit 553 of 1999 shall accordingly stand allowed. However, having regard to the interests of justice, it would be appropriate to direct that the Petitioner shall pay to the Respondent costs quantified at Rs.2,000/- which shall be a condition precedent. Costs to be paid within a period of four weeks from today. The Petition is accordingly disposed of.